

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.384 to 386 of 2011,
M.P.Nos.1,1,1,2 and 2 of 2011

- 1.Tamil Nadu Housing Board
Rep. by Managing Director,
No.331, Anna Salai, Nandanam, Chennai -35.
- 2.The Superintending Engineer,
Tamil Nadu Housing Board,
Vellore, Vellore -9.
- 3.The Executive Engineer,
Tiruvannamalai Division,
Now merged with Vellore Housing Unit,
Sathuvachari, Vellore -9.Appellants in all Appeals

Vs

N.ChandraRespondent in W.A.No.384/2011
R.SekarRespondent in W.A.No.385/2011
F.Rahman SheriffRespondent in W.A.No.386/2011

Prayer:- Writ Appeals filed under clause 15 of Letters Patent, against the order made in W.P.Nos.47841, 12876 and 12877 of 2006 respectively dated 13.08.2010.

Prayer in W.P. Nos 47841,12876 and 12877/2006:

Writ Petitions filed under Article 226 of the constitution of India to issue a Writ of Mandamus directing the Respondents 2 and 3 to refund excess amount of Rs. 46,665/- Rs. 32,397/- and Rs. 54,538/- respectively, collected from the Petitioners excessively and also direct the Respondents to deliver the Petitioners original Documents pertaining to the Respective houses, bearing Door. Nos. A44, A27 and 70, 'B' Type Tamil Nadu Housing Board, Mullipatti Village, Sevour Post, Arni Taluk, Vellore District to the petitioners forthwith.

For Appellants : Mr.V.Anandhamoorthy
Standing Counsel (in all Appeals)

For Respondents: Ms.Dhakshayani Reddy
for Mr.S.Santhosh (in all appeals)

C O M M O N J U D G M E N T
(Judgment of the Court was made by K.K.SASIDHARAN,J.)

The respondent in the respective writ appeals filed writ petitions before the writ court for a direction to the Tamil Nadu Housing Board to refund the alleged excess amount taking into account the rate at which houses were sold subsequently. The writ petitions were allowed by the learned single Judge on the ground that subsequent allottees were given housing units at a lesser cost and as such, the respondents are also entitled to similar treatment. Feeling aggrieved, the appellants are before this Court.

2. Heard the learned Standing Counsel on behalf of the appellants and the learned counsel for the respondent in the respective appeals.

3. The Tamil Nadu Housing Board issued allotment orders to the respondent in the respective appeals (hereinafter referred to as "allottees") allotting Middle Income Group Houses constructed under Small and Medium Town Scheme indicating the total cost of the house. The allottees made payment pursuant to the order of allotment. Thereafter, they found that the remaining houses were sold at a lesser rate. The allottees therefore made a request for refund of the alleged excess amount paid by them. Since follow up action was not taken pursuant to their representation, writ petitions were filed.

4. The learned single Judge allowed the writ petitions filed by the respondents and directed refund of the excess amount on the ground that they are similarly situated like other allottees, who have been given houses at a lesser rate subsequently.

5. The allottees were all given individual houses on determination of the cost. They had agreed to pay the cost of the house and entered into an agreement with the Housing Board. The allottees are bound by the terms and conditions of the order

of allotment and the concluded contract. There is no question of avoiding the liability on the ground that on a subsequent occasion, houses were given at a lesser rate. There was no compulsion to the allottees to purchase the house at the rate prevailing at the time when they made the application. The allottees knowing fully well the terms and conditions of the allotment including the cost of the allotted plot and house voluntarily entered into an agreement with the Housing Board. The subsequent reduction in the cost by the Housing Board would not give a right to the earlier allottees to claim refund. This aspect was not considered by the learned single Judge. Being a concluded contract, the allottees are bound to pay the entire amount as indicated in the agreement. There is no question of refund of the amount taking into account the subsequent allotment at a lesser rate.

6. We are therefore of the view that the learned single Judge was not correct in allowing the writ petitions. The common order dated 13 August 2010 is set aside.

7. The working sheet produced by the learned Standing Counsel for the Housing Board indicates the amount payable by the respondent in the respective writ appeals.

i) The respondent in W.A.No.384 of 2011 is liable to pay a sum of Rs.81,480/-. The learned counsel for the respondent submitted that the respondent is prepared to pay a sum of Rs.30,000/- forthwith and the remaining amount in instalments. The respondent in W.A.No.384 of 2016 is directed to pay a sum of Rs.30,000/- (Rupees thirty thousand only) within a period of one week from the date of receipt of a copy of this judgment and the remaining amount in instalments. In case, the entire amount as shown above is paid on or before 31 March, 2018, there will be no further liability to pay interest.

ii) The respondent in W.A.No.385 of 2011 is liable to pay a sum of Rs.1,16,767/-. The learned counsel for the respondent submitted that the respondent is prepared to pay a sum of Rs.40,000/- forthwith and the remaining amount in instalments. The respondent in W.A.No.385 of 2011 is directed to pay a sum of Rs.40,000/- (Rupees Forty thousand only) within a period of one week from the date of receipt of a copy of this judgment and the remaining amount in instalments. In case, the entire amount as shown above is paid on or before 31 March, 2018, there will be no liability to pay further interest.

iii) The respondent in W.A.No.386 of 2011 is in arrears to the tune of Rs.10,441/-. The respondent is directed to pay the said amount on or before 31 January, 2018.

8. The Housing Board is directed to execute the Sale Deed in the name of the concerned allottees within a period of two weeks from the date of payment of the entire amount as indicated above.

9. The intra court appeals are disposed of as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

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Sathuvachari, Vellore -9.

+3 Ccs to Mr.S. Santhosah, Advocate sr 87117,87118,87119.

+3 Ccs to Mr.V. Ananthamurthy, Advocate sr 87244,87245,87246.

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W.A Nos.384 to 386 of 2011

SSD(CO)
SP(06/02/2018)